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Office of Regulations and Interpretations  
Employee Benefit Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

**Attn: Lifetime Income RFI – RIN 1210-AB33**

Dear Sir or Madam;

J.P. Morgan Asset Management appreciates the opportunity to respond to the Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans (RFI) issued by the Department of Labor, the Department of the Treasury and the Internal Revenue Service (the agencies).

J.P. Morgan Asset Management operates in more than 50 locations worldwide with 650 investment management professionals who offer more than 200 different investment strategies to its clients. These strategies span the spectrum of asset classes including equity, fixed income, cash liquidity, currency, real estate, hedge funds and private equity. J.P. Morgan Asset Management has more than \$1.2 trillion in assets under management globally with more than \$193.9 billion in retirement plan assets under management, representing 2,395 retirement plans across the corporate, public, union and endowment foundation sectors (as of March 31, 2010). J.P. Morgan Retirement Plan Services, a part of J.P. Morgan Asset Management, provides total wealth retirement plan services to some of the nation's largest employers. As of March 31, 2010, it serves more than 1.8 million plan-level participants, more than 350 defined contribution and defined benefit plans with more than \$17.8 billion in proprietary assets and a total of \$112.2 billion in assets under supervision.

We commend the agencies for their interest and efforts in promoting retirement security for American workers. We also share the agencies' concerns regarding the level of preparedness of workers for retirement and how to best ensure that their retirement savings last throughout their, and, where appropriate, their spouses' retirement years.

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We certainly agree that there are benefits to providing options to plan participants that enable them to structure a retirement income flow that best meets their unique situations. Flexibility is a key issue as each plan participant's circumstances and needs vary. We are concerned, however, with a regulatory approach that might promote certain types of retirement income products over others, or one that would mandate specific forms of distributions.

Depending on the structure of the particular product, we may have some concerns regarding efforts to include deferred or accumulating lifetime income products as a qualified default investment alternative (QDIA); expanding ERISA Section 404(c) to encourage the use of these investments or any other plan design-based provisions. We have found that QDIAs are most frequently used in conjunction with retirement plans providing automatic enrollment where the participant does not make an investment election. We have concerns about higher costs associated with accumulating lifetime income products, potential limited portability of these products and their suitability for younger workers (each of these issues is discussed in greater detail below). A younger participant's focus is on the accumulation of assets. Promoting investment products that carry higher costs may not be in the participant's best interest. On the other hand, these products may play an important role in developing a retirement strategy for older participants. A key factor is the structure of the product. If an accumulating lifetime income product is designed in such a manner that the additional costs associated with the guaranteed lifetime income stream is not assessed until the participant has reached an appropriate age, and prior to that time the portability constraints could be eliminated (i.e. the annuity feature were freely transferable with no liquidation penalties), then there may be situations in which this type of product could be considered appropriate for QDIA purposes.

These lifetime income products also create a number of concerns from a fiduciary and plan administration standpoint. Accumulating lifetime income products have both an investment component and an annuity component. Currently, there is no guidance for plan fiduciaries regarding how to evaluate and monitor the combination of these components in the context of a defined contribution plan. From an administrative standpoint, the nature of these products raises certain operational problems. Not all products may be easily transferable from one recordkeeper to another, limiting a participant's options upon termination of employment as well as hindering fiduciary decisions regarding replacing the product or changing recordkeepers. These products are still in the early stages of development, and there would be concerns regarding the market's ability to meet demand should usage be mandated. Given the limited current plan sponsor and employee demand for these products, the fiduciary concerns regarding selection and ongoing evaluation, the administrative and portability problems with these products, and questions regarding market capacity, it would seem premature for the agencies to implement policies encouraging their use.

We do not believe it is appropriate to mandate that all defined contribution plans offer distributions in the form of a lifetime income option, annuity or mandate that plans have as their default distribution option some form of lifetime income product. In doing so, the agencies would be substituting their judgment for the participant's judgment as to what distribution option is in the participant's best interest. Each participant is faced with a set of unique circumstances regarding his or her retirement. Factors outside of any single plan may have a significant impact on what would be the most appropriate form of structuring retirement income. In addition, because lifetime income options are typically more complicated than lump-sum cash distribution options, particularly when the lifetime income option is combined with survivor benefits and survivor rights, mandating a lifetime income option in defined contribution plans may discourage employers from adopting or maintaining such plans. Certainly, the cost of maintaining defined contribution plans would increase at the margin.

In reviewing the questions raised in the RFI, it would seem that they can be broken down into three broad categories: retirement income products, participant education and communication, and plan design/fiduciary issues.

### **Retirement Income Products**

A number of the questions in the RFI focused on which retirement income products are available and their level of usage. Recently, we have seen some insurers introduce incremental or accumulating annuity arrangements as an investment product for defined contribution plans. The products can come in several different forms, including the following.

- **Fixed income annuities** – providing a guaranteed, fixed, monthly income for a participant's lifetime. The monthly income will not change month-to-month or year-to-year based on market fluctuations unless the participant elects an annuity with a cost of living adjustment rider.
- **Guaranteed minimum income benefits** – providing a guaranteed monthly income to a participant for his or her lifetime. Participant and/or employer contributions purchase amounts of guaranteed retirement income payable at age 65. All contributions are invested in an underlying investment portfolio and, therefore, the guaranteed income amount may increase based on the performance of the underlying investment fund. The monthly income in retirement may also increase or decrease based on the investment performance but will never go lower than the guaranteed amount. This option also provides a participant the ability to transfer out of the investment without a surrender charge prior to annuitization; however, the guarantee is decreased proportionately.

- **Guaranteed minimum withdrawal benefits** – similar to guaranteed minimum income benefits. However, this option provides a stated percent of the guaranteed amount versus a stated income amount. With this option, participant and/or employer contributions are invested in an underlying investment portfolio. A participant's account balance is reset annually to the greater of the market value of the participant's account balance on a specific day or the prior year's balance plus any contributions made during the past year. Beginning at age 65, a participant may begin to withdraw a stated percent (e.g., 5%) of the guaranteed amount. The withdrawal amount may increase year-to-year based on the performance of the underlying investment fund. A participant may also transfer out of the investment at any time or take additional amounts at any time during retirement; however, the guaranteed amount is reduced proportionately based on the amount of the transfer or withdrawal. Once a participant's balance in the investment is depleted, the insurer takes over the payment of the last guaranteed withdrawal amount.

These insurance products generally provide participants with the opportunity to accumulate an interest in an annuity during the accumulation phase. Currently, these products are in very few defined contribution plans. None of the plans we recordkeep currently have these investments in their plans, and there has been little interest expressed by sponsors in obtaining these products.

One of the presumed advantages of the accumulating annuity products is their similarity to investment options with which participants are familiar. Participants are typically provided with the current market value of the investment, the future accrued benefit and an estimated future benefit based on continuing contributions. Disadvantages of these products include the need to tie the participants to the particular guaranteed benefit structure and the increased costs beyond the underlying investment management fees. There may be limited or no flexibility in choosing an alternative path once the participant selects an annuity option, and the sustainability of a lifetime income guarantee may be tied to the long-term financial health of the insurer. There are also questions regarding the portability of these products should a participant change jobs or if the plan sponsor wishes to change service providers.

Several questions were raised in the RFI about the costs associated with lifetime income products and what features have a significant impact on those costs. There are several features that can impact the costs of these lifetime income products. The product features that have the biggest impact on the cost of a guaranteed income product are:

- **Flexibility features** – The greater number of flexibility features create an unknown time frame during which the assets are guaranteed. If flexibility is provided without an official guarantee, then there may be little impact to the cost but, the investor takes on an added risk that the account balance will not last his or her lifetime.

- **Fees of underlying investments** – When the underlying investments become more expensive without providing additional return, the principal balance of a participant’s account is depleted more rapidly due to the payment of these fees, which increases the fees for guaranteeing the portfolio. The incremental investment management fees also become incremental wrap fees.
- **Volatility of underlying investments** – Despite the increase in likely return, an increase in volatility of underlying investments increases the fees of the wrap due to the greater cost to hedge the assets and the increased possibility of negative results having an impact on the insurance provider.
- **The cost/difficulty of hedging the underlying investments** – Adding extended markets in a traditional investment vehicle can add to the potential returns and reduce volatility. However, these assets may be more expensive or impossible to directly hedge and, therefore, the added risks of "proxy hedges" can dramatically add to the cost of providing the guarantee.

In addition to costs, there are a number of factors that should be considered by fiduciaries in evaluating annuity products.

- **Cost** – The cost of an option refers to the load or expense paid to convert a lump-sum amount of savings into an income stream. The cost effectiveness of an option can be measured by the amount of income generated per \$1,000 of savings, for example. The cost of an option may appear explicitly, such as an expense load on the investment return, or implicitly, such as a deviation from an actuarially equivalent product.
- **Longevity protection** – An option that offers longevity protection help ensures that income will not cease merely because a retiree lives beyond a certain age. Participants may find this protection useful to the extent that they need their savings to generate income throughout their retirement. Some will not – like those with more savings than they could spend given their lifestyle and adequate spending discipline. However, many retirees and pre-retirees admit some concern about running out of money. As such, retirees without this protection not only risk premature exhaustion of savings but also spending less than they otherwise could have because they fear depleting their savings.
- **Inflation protection** – An option that offers inflation protection will have the ability to insure the income stream against the loss of purchasing power. To the extent a retiree depends on this income stream to provide certain goods and services in retirement, the ideal option would match fluctuations in the cost of goods and services with similar changes in the amount of income it provides.
- **Investment risk protection** – This criterion assesses how well the option protects expected income from poor investment experience. The greater the risk of reduced income due to the underlying investments, the less protection the option offers.

- **Credit Worthiness** – The long-term solvency of the insurance provider must be considered by the plan fiduciary in determining the ability to pay future benefits. While state insurance laws may provide some level of protection, a prudent fiduciary cannot rely on this alone.
- **Simplicity** – This criterion assesses the complexity of an option from a participant’s point of view. More specifically, the extent to which complexity may deter the selection of an option or increase the likelihood of improper use. An option will only produce income for participants who elect it, and incorrect use will reduce the efficiency of income production.
- **Flexibility** – Flexibility assesses how well an option adapts to potential changes in a retiree’s income needs. Examples of features that allow flexibility include the ability to recoup savings if the participant dies soon after electing an annuity or the ability to reallocate savings due to a change in status (such as long-term care needs). Flexibility also includes the ability to select an option that fits a participant’s lifestyle needs. For example, does the option allow a participant to use only a portion of his or her savings for income so that the rest remains available for other savings goals? Flexibility may help to overcome some of the behavioral hurdles to selecting an income option. However, it often comes at a price, reducing the amount of income generated by the option.
- **Qualified plan fit** – This criterion assesses the ease with which a plan sponsor can implement and maintain an option in a qualified defined contribution plan setting. For example, the regulations pertaining to qualified plans can create hurdles to the implementation of certain plan features and options. A plan sponsor might consider the ability of its (or its third party) administrative systems to manage such an option and the costs associated with it.
- **Portability** – Portability reflects the ability to move in and out of a particular option or product within an option. For example, what happens when a participant terminates employment? Will the option allow for easy transfer out of the plan (by rollover or other means) or will it require a participant to keep an account in the plan, perhaps resulting in fees to the plan? The plan sponsor should also consider the consequences if it should want to change the product offerings in the plan. Will the plan sponsor need to retain frozen accounts or can they just transfer the accounts to another provider?
- **Fiduciary concerns** – Currently, there is little guidance regarding how a plan sponsor would meet its fiduciary obligation of selecting and monitoring an accumulating lifetime income product. The fiduciary issues associated with accumulating income products in defined contribution plans, including the selection of insurance providers, are more complex than the issues associated with the selection of an annuity provider in connection with a defined benefit pension plan. The portability concerns addressed above could have the unintended consequence of limiting a plan sponsor’s ability to change funds or providers, thereby, potentially undermining their fiduciary responsibility.

With regard to the availability of lifetime income products at retirement, a participant has the option of rolling into or purchasing an annuity with his or her retirement distribution. Many service providers offer an annuity “shopping platform” that participants may access to help them select an appropriate annuity.

### **Participant Education and Communication**

A number of questions in the RFI concerned communication strategies and the potential application of behavioral science. Over the life of defined contribution plans, there has been considerable effort around “participant education.” Numerous strategies have been tried and yet there remains significant concern regarding participants’ retirement security. As a result, the industry has turned toward more passive strategies including automatic enrollment programs and managed accounts to improve participants’ retirement readiness. These are effective tools, especially given the general apathy among these “accidental investors.”

The majority of 401(k) plan participants are accidental investors. They are taking advantage of employee benefits that happen to involve investing in the financial markets. Despite the efforts to educate the population, the majority remain passive participants. J.P. Morgan Retirement Plan Services released a study in November 2009, which demonstrated participants’ perspectives. Entitled “Anything But Certain,” the findings showed:

- Two-thirds of 401(k) plan participants admitted they don’t read the plan information they receive from their employers or providers.
- Although 27% of 401(k) plan participants cited retirement as their top financial goal, daily bills, credit card balances and mortgage payments comprised 63%, placing an overwhelming priority on debt management.
- 21% of participants were not at all confident they will achieve their retirement goals.
- 18% of participants were unsure of what they’ll need for retirement; however, 29% think they’re on track for less than 50% of their current income in retirement, and another 23% are unsure how they’re progressing toward their retirement goals.
- 58% of participants indicated they did not have enough time to pay attention to their retirement investments on a regular basis.

When considering what information participants need in making decisions about retirement income, a complex subject itself, employers and regulators should consider the mindset of participants. Younger participants generally have less interest in this area and efforts should focus on getting them to participate in the plan at an appropriate contribution level. Older participants, those age 50 or older, generally are more actively engaged in retirement planning, and targeting education efforts at these individuals would be more effective than mandating education efforts to everyone in the employee population. Mandates attempt to force the behavior of large groups whereas targeted communications focus the message to where it will be most effective.

Application of behavioral science has shown some promise. Behavioral strategies have been very effective in promoting “good” behavior in 401(k) plans with respect to enrollment and contribution rates. From plan design strategies such as automatic enrollment and automatic acceleration to communication and marketing tactics such as placement of information and social norms, employers can effectively drive positive change among individuals with respect to their retirement savings patterns.

Applying these strategies to retirement income involves different challenges. Participation and contribution levels are relatively simple decisions when compared to the number of factors that must be considered in effective retirement planning. In addition, the context of what is needed for retirement is extremely important. In theory, retirement income would convey annual income which is paramount. Communicating an account balance exclusively does not present an accurate picture. At J.P. Morgan account statements can provide both account balance and how that would translate into annual income in today’s dollars. The majority of 401(k) plan participants cannot glean perspective around account balance. The context makes all the difference. Providing a participant with an account balance projection alone does not give him or her sufficient information to make an informed decision. Translating the account balance into an annual income allows the individual to make an appropriate comparison to his or her lifestyle today. Since 2001, J.P. Morgan generally has presented both views in its account statements. An individual receives a view of the account balance at a point in time along with a chart translating that figure into an estimated annual income in retirement at three different ages – typically 62, 65 and 67. Finally, any discussion of retirement income must be handled in a personalized fashion to effectively communicate what it means to each individual participant.

In the end, any participant communications – whether about retirement income, plan participation or asset allocation – must be personalized and simple to drive the best outcomes for individuals.

### **Plan Design/Fiduciary Issues**

Perhaps the key issue when considering plan design implications of lifetime income options is to make certain that plan sponsors have the flexibility to design their plans to meet their participants' needs and best interests. Participants have unique needs and circumstances, and there is no "one size fits all" solution for their retirement. The agencies should refrain from any mandates that would require defined contribution plans to offer annuities as a distribution option, and rather, promote policies that encourage offering annuities as an option.

The RFI asked a number of questions regarding plan provisions and annuities including whether company matching contributions are used to fund annuities and the extent to which the choice of purchasing an annuity or purchasing a partial annuity is available. We are not aware of any plans utilizing employer contributions to fund lifetime incomes, nor are we aware of participants being given a choice to have such contributions used in this manner. A small percentage of plans that we service provide for an annuity distribution option and few, if any, allow a "partial" annuity distribution option. As discussed above, there has been some movement among plan sponsors to provide an annuity "shopping platform" that participants may access to help them select an appropriate annuity.

While the lack of participant demand could be addressed through participant education as discussed above, plan sponsors may still have concerns regarding fiduciary liability for the selection of an annuity provider. Existing Safe Harbor provisions regarding the selection of annuity providers seem to rely on a subjective judgment as to whether the actions of a plan sponsor satisfy the Safe Harbor provisions, leaving it up to the courts to ultimately decide if decisions about an annuity provider's long-term financial viability were prudent or if costs are reasonable in relation to the benefits and services provided. To be meaningful, the Safe Harbor provisions should provide objective standards that plan fiduciaries could rely on in selecting and evaluating the various lifetime income products.

The RFI also questions the affect of the required minimum distribution rules (RMD) on the decision to offer lifetime annuity products. We believe that RMD rules inhibit a participant's ability to effectively manage their retirement income stream. The RMD rules may force participants to take distributions when it may not be prudent to do so, a fact that was recognized by Congress when it suspended RMD's for 2009 under the Worker, Retiree and Employer Recovery Act of 2008. That being said, we would be concerned with an approach that exempted a specific product from application of the RMD rules. This could have the unintended consequence of creating a bias toward that product and encouraging usage even when it is not in the best interests of participants.

**Conclusion**

We agree with and share the agencies' goal of enhancing the retirement security of participants in employer sponsored retirement plans. We believe that this goal can best be attained by not creating new mandates or constraints that limit the flexibility of plan sponsors to design retirement plans that best meet the needs of their participants or stifle the ability of the market to innovate. It should be remembered that the first usage of many of the strategies discussed in the RFI such as automatic enrollment, use of behavioral strategies, default funds with equity exposure, investment advice and participant education programs, were not the result of legislative or regulatory initiatives but came from industry innovation. As the industry focuses on retirement income and the decumulation phase of retirement, we would encourage avoiding any regulatory action that might have the unintended consequence of limiting future innovation.

Once again, we appreciate the chance to comment and would welcome any opportunity to discuss this issue further.

Kindest regards,



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